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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

N.M.,

Defendant and Appellant.

2d Crim. No. B300355
(Super. Ct. No. 2016021126)
(Ventura County)

Minor N.M. appeals a disposition order committing him to the Division of Juvenile Justice (DJJ) for a maximum period of confinement of four years. (Welf. & Inst. Code, §§ 602, 731, subd. (a)(4), 734.)¹

This appeal concerns N.M.'s three-year history with the juvenile justice system. The juvenile court declared him to be a ward of the court at age 13, after he admitted to unlawfully taking or driving a vehicle, and escaping from electronic

¹ All statutory references are to the Welfare and Institutions Code unless stated otherwise.

monitoring. (§§ 602, 871, subd. (d); Veh. Code, § 10851, subd. (a).) Two months later, the court sustained a subsequent petition alleging that N.M. committed robbery with personal use of a deadly weapon (knife). (Pen. Code, §§ 211, 12022, subd. (b)(1).) Thereafter, N.M. violated his probation terms seven times over the following years, including absconding from custody, drug use, fighting with other wards, and vandalism. Despite frequent warnings from the probation officer and the court that a DJJ commitment was being considered, N.M. persisted in his delinquent behavior. On July 1, 2019, the court committed N.M. to the DJJ. On appeal, N.M. challenges his commitment as an abuse of discretion, asserting that insufficient evidence exists that the commitment would be of probable benefit to him. (§§ 202, subd. (b), 734.) We reject this contention and affirm.

FACTUAL AND PROCEDURAL HISTORY

N.M. and his siblings lived with their mother who suffers from longtime drug addiction and sometime homelessness. N.M.'s father died in 2012 from a heroin overdose. The family has been the subject of many referrals to the Ventura County Human Services Agency with allegations of general child neglect and physical abuse.

Original and Amended Petition

On June 2, 2016, the prosecutor filed a wardship petition alleging that N.M. committed first degree residential burglary, and two counts of unlawful driving or taking of a vehicle. On May 23, 2016, police officers discovered N.M., then 13 years old, driving a stolen car. N.M. led officers on a high speed traffic chase. The residential burglary count and the second count of vehicle theft involved a different vehicle that N.M. drove after he entered a stranger's locked residence and took the vehicle keys.

The probation officer recommended that N.M. be detained because he required “structure, stability and intervention.” The juvenile court permitted N.M. to remain out of custody subject to electronic monitoring. On June 20, 2016, N.M. removed his electronic monitoring strap and left home. Approximately one week later, police officers arrested him and the prosecutor amended the petition to add a count alleging misdemeanor escape from custody by removal of an electronic monitoring device.

N.M. then admitted that he unlawfully took or drove a vehicle, and that he escaped from electronic custody. (Veh. Code, § 10851, subd. (a); § 871, subd. (d).) On August 8, 2016, the juvenile court sustained the allegations of the petition as admitted, declared N.M. to be a ward of the court, and deferred entry of judgment for 36 months.

During the deferred entry of judgment period, N.M. did not complete any community service or report regularly to probation. He also unlawfully possessed marijuana, brought a knife onto school grounds, was expelled from school, and committed vandalism.

Subsequent Petition

On October 20, 2016, N.M. robbed classmate O.B. at knifepoint inside a fast-food restaurant. N.M. approached O.B. from behind, held a knife against his back, and demanded his money. O.B. turned around and saw N.M. place a folding knife inside his pocket. O.B. gave N.M. his money and hurried from the restaurant. A police officer later found a folding knife in N.M.’s pocket. The blade of the knife opened to eight inches.

Following a contested hearing, the juvenile court sustained a subsequent petition alleging that N.M. committed first degree

robbery while personally using a deadly weapon. (Pen. Code, §§ 211, 12022, subd. (b)(1).) As a term of probation, the court ordered N.M. to serve 330 days at Juvenile Justice Facilities (JJF), and calculated his maximum term of confinement as seven years. The court also revoked and terminated the deferred entry of judgment regarding the original and amended petitions and warned N.M. to reform or face a DJJ commitment.

Probation Violations

N.M. violated the terms of his probation four times during JJF custody. On April 17, 2017, probation officers planned to move N.M. to Valley Teen Ranch, a group home. When they stopped for a meal break during the road trip, N.M. absconded from custody. Nearly two months later, police officers located and arrested N.M. He had a replica firearm in his possession at the time. The juvenile court found that N.M. had violated the terms of his probation and ordered that he serve 60 additional days in JJF.

Ten days later, N.M. assaulted another ward, the fifth assault that he committed at JJF. The juvenile court ordered N.M. to serve 90 additional days in JJF.

N.M. then committed probation violations by possession of contraband (metal wire), fighting with other wards, and vandalizing property. The probation officer noted that N.M. has continued his “defiant and violent behavior” and has made only minimal progress at rehabilitation. The court again warned N.M. of the possibility of a DJJ commitment, and ordered him to serve 120 additional days in JJF.

N.M.’s fourth probation violation concerned graffiti-vandalism committed in August 2017. The juvenile court ordered N.M. to pay restitution to JJF.

Thereafter, N.M. violated the terms of his probation three more times during residential placement with his grandmother. Within two months of placement, N.M. violated curfew, took his aunt's vehicle, and tested positive for methamphetamine, among other violations. The probation officer recommended a DJJ commitment because N.M. required "intensive rehabilitation." The probation report stated that DJJ had screened N.M. and the services available to him at DJJ included "mental health treatment, substance abuse treatment, gang intervention, education services, aggression interruption training, CounterPoint (prosocial training program), and a re-entry program prior to the youth's release." The juvenile court did not then commit N.M. to DJJ but ordered him to serve 60 additional days at JJF and 30 days with electronic monitoring. At N.M.'s request, the 30 days of electronic monitoring was modified to 30 additional days of custody at JJF.

N.M.'s sixth violation of the terms of his probation included throwing food at school, instigating a gang conflict, and absconding from placement for a week. During his arrest, N.M. resisted police officers and entered a nearby residence without permission. This time, the probation officer and the prosecutor recommended a DJJ commitment, but N.M.'s grandmother again disagreed. The juvenile court ordered N.M. to serve 90 additional days in JJF and warned him that a DJJ commitment would be forthcoming if he continued his misbehavior.

N.M.'s final probation violation occurred on December 12, 2018, when he failed to participate in drug testing. Four days later, N.M. absconded from his grandmother's residence and his whereabouts were unknown for four months until he was arrested for vandalism. For the third time, N.M.'s probation

officer recommended a DJJ commitment. In a letter, N.M. requested that he receive anger management therapy. This time, N.M.'s grandmother informed the probation officer that she could no longer support N.M.'s placement in her home.

On July 1, 2019, the juvenile court held a disposition hearing regarding N.M.'s recent probation violation. The juvenile court judge stated that he intended to commit N.M. to DJJ because N.M. would benefit from its programs: "I do believe [N.M.] would benefit from programming at the [DJJ]. There are some good programs. We've seen that in other cases." The court rejected N.M.'s plea for another chance, based upon N.M. pointing out that his mother recently completed residential drug treatment and now was employed. The court then committed N.M. to DJJ for a maximum term of confinement of four years. The court also specifically found that N.M. would receive probable benefit from the reformatory, educational discipline, and other treatment provided by DJJ.

N.M. appeals and contends that there is not substantial evidence that a DJJ commitment would be of probable benefit to him.

DISCUSSION

N.M. asserts that the juvenile court's general remarks regarding the programs at DJJ and the benefits realized by other wards are insufficient to establish a probable benefit to him. He adds that the court did not discuss the DJJ programs that would address his mental health needs. N.M. relies upon *In re Carlos J.* (2018) 22 Cal.App.5th 1, 10, holding that a court's finding of probable benefit must rest upon evidence of specific DJJ programs.

We review the juvenile court's commitment order for an abuse of discretion, indulging all reasonable inferences in support of the decision. (*In re N.C.* (2019) 39 Cal.App.5th 81, 85; *In re A.M.* (2019) 38 Cal.App.5th 440, 448.) In determining the sufficiency of evidence to support the commitment, we examine the evidence presented at the disposition hearing in light of the purposes of the juvenile court law. (*In re N.C.*, at p. 85; *In re A.M.*, at p. 449.) Section 202, subdivision (a) provides that the general purpose of the law is "to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible." Moreover, the court may "remov[e] the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public." (*Ibid.*) There is no absolute rule, however, that a DJJ commitment must be a last resort placement and cannot be ordered where necessary to protect the public. (*In re N.C.*, at p. 86; *In re A.M.*, at p. 449.)

To support the necessity of a commitment, there must be evidence supporting a determination that less restrictive alternatives are ineffective or inappropriate. (*In re N.C.*, *supra*, 39 Cal.App.5th 81, 86.) Important here, there also must be substantial evidence in the record establishing a probable benefit to the minor by a DJJ commitment. (§ 734 ["No ward of the juvenile court shall be committed to the [DJJ] unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [DJJ]"]; *In re Carlos J.*, *supra*, 22 Cal.App.5th 1, 6.) "There is no requirement

that the court find exactly how a minor will benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed.” (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

We conclude that reasonable and credible evidence supports the juvenile court’s findings of a probable benefit to N.M. from a DJJ commitment. (*In re Jonathan T.*, *supra*, 166 Cal.App.4th 474, 484-485 [DJJ commitment upheld where minor had history of running away and aggressive behavior at juvenile hall].) N.M.’s probation officer opined that N.M. required “structure, stability and intervention.” N.M. recognized his need for structure by requesting additional days of custody in lieu of electronic monitoring. N.M. also wrote the court and requested anger management classes. A DJJ intake officer reviewed N.M.’s case on March 22, 2018, and opined that he was eligible for commitment to DJJ as a category 4 offender. The probation report stated that “mental health treatment, substance abuse treatment, gang intervention, education services, aggression interruption training, CounterPoint (prosocial training program), and a re-entry program” would be available to N.M. “prior to [his] release.” On December 20, 2018, another DJJ intake officer also reviewed N.M.’s case, formed the same opinion, and listed the identical programs. Moreover, given N.M.’s history of absconding and his whereabouts unknown for weeks or months at a time, the secure setting of DJJ would benefit him. Unlike the circumstances in *In re Carlos J.*, *supra*, 22 Cal.App.5th 1, 14, the evidence here was sufficiently specific to permit a finding of probable benefit. (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1081, fn. 3.)

The judgment (order) is affirmed.
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GILBERT, P. J.

We concur:

YEGAN, J.

PERREN, J.

Kevin J. McGee, Judge

Superior Court County of Ventura

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